

For example, when an associate “has a scheduled shift but does not clock in within the scheduled start and end time” the associate is considered “absent” and receives 1 occurrence. An associate whose “clock in time is 10 or more minutes after the scheduled shift start time and no more than 120 minutes after the scheduled shift start time” is considered “late in” and receives a 0.5 occurrence. An associate whose “[c]lock in time is more than 120 minutes after the scheduled shift start time” is considered “absent late in” and receives 1 occurrence. Additionally, an associate whose “clock out time is 10 or more minutes before the scheduled shift end time and no more than 120 minutes before the scheduled shift end time” is considered “early out” and receives a 0.5 occurrence. An associate whose [c]lock out time is more than 120 minutes before the shift end time” is considered “absent early out” and receives 1 occurrence. Associates who do not contact management when they are absent are “absent no call” as defined by the Policy, and receive 3 occurrences. [*Id.*]

Under the Policy, Walmart informs associates, “[i]f you accumulate nine (9) or more occurrences in a rolling six-month period, through any combination, you will be subject to termination. As an example, the Policy states that “if you have eight (8) occurrences and receive an additional occurrence due to an unauthorized absence within the same six month period of time, you will be subject to termination.” [*Id.*]

Additionally, for associates who have been employed for six (6) months or less, if they accumulate four (4) or more occurrences in their first six (6) months of employment, through any combination, they are subject to termination. [*Id.*]

Associates can check their attendance record daily on computers throughout the store and online at home so they know their occurrence level at any particular time.¹

During orientation, (b) (6), (b) (7)(C) trains associates about the Attendance/Punctuality Policy, along with other policies. (b) (6), (b) (7)(C) received training regarding the Policy. [Tab 6.] (b) (6), (b) (7)(C) also received training about Walmart’s Open Door Policy, which encourages associates to “bring suggestions, observations, or concerns to the attention of a supervisor or manager without fear of retaliation.” [Tabs 6, 7.]

¹ Walmart also maintains a Personal Leave of Absence Policy that, if eligible, employees may use when they are absent from work for more than three days if approved by the Company’s third-party administrator Sedgwick. [Tab 4.] Walmart also maintains a Paid Time Off – Hourly Associates Policy that associates may use if they need to be away for vacations, holidays, or when they are ill or need time away to take care of a personal issue. [Tab 5.] The PTO program does not change or expand any terms or conditions of the Leave of Absence Policy, Attendance/Punctuality Policy, or other policies. [*Id.*]

C. **(b) (6), (b) (7)(C) Regularly Walks The Store To Ensure Customer Service, Task Completion, And Talk To Associates.**

1. **Walmart's Coaching By Walking Around Policy.**

(b) (6), (b) (7)(C) manages the entire store operations and supervises all of the managers and associates who work at Store 3731. As part of the upper-level management team of the store, (b) (6), (b) (7)(C) regularly walks the sales floor and other work areas (also known as "touring" the store) to ensure customer service, task completion, store safety and security, and to talk with associates. Under the Company's Coaching By Walking Around Policy ("CBWA") – which "is the largest element of internal communication here at Walmart" – (b) (6), (b) (7)(C) and other managers regularly walk through the store "just to visit with associates and get a feel for how things are going." [Tab 8.] As part of the Policy, Walmart informs its associates that: "Our managers genuinely care about and are interested in our associates. When a manager creates the opportunity to have a relaxed, comfortable, and informal time for sharing information – that is what we call CBWA." [Id.] The CBWA Policy further instructs associates:

Sometimes your manager will act as a resource while walking around. Your manager may also just take advantage of the opportunity to let you know what a good job you are doing or learn more about your family and interests. This coaching technique gives you an opportunity for face to face contact with your Servant Leaders. Your managers may not have an opportunity to talk to everyone every day, but you can expect to see them often.

[Id.]

In accordance with (b) (6), (b) (7)(C)'s job duties and responsibilities to do CBWA, (b) (6), (b) (7)(C) (as well as other salaried managers at the store) walk throughout the entire store multiple times each day as part of the CBWA process discussed above.

2. **During A Store Tour, (b) (6), (b) (7)(C) Saw (b) (6), (b) (7)(C) Wearing A Boot On (b) (6), (b) (7)(C) Foot; Concerned For (b) (6), (b) (7)(C) Safety, (b) (6), (b) (7)(C) Talked With (b) (6), (b) (7)(C) About It.**

In early (b) (6), (b) (7)(C) 2018, during one of (b) (6), (b) (7)(C)'s daily store tours, (b) (6), (b) (7)(C) thought (b) (6), (b) (7)(C) saw (b) (6), (b) (7)(C) wearing a boot on (b) (6), (b) (7)(C) foot (as if (b) (6), (b) (7)(C) was injured) while working in (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) approached and opened the door (b) (6), (b) (7)(C) to confirm that (b) (6), (b) (7)(C) was wearing a boot, which (b) (6), (b) (7)(C) did. (b) (6), (b) (7)(C) was concerned for (b) (6), (b) (7)(C) safety and talked with (b) (6), (b) (7)(C) about whether (b) (6), (b) (7)(C) was approved to wear it while working. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) submitted a note from (b) (6), (b) (7)(C) doctor dated (b) (6), (b) (7)(C), 2018, stating that (b) (6), (b) (7)(C) could return to work the following day (b) (6), (b) (7)(C), but would have to wear the boot the next three weeks. [Tab 9.] (b) (6), (b) (7)(C) also told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) injured (b) (6), (b) (7)(C) away from work.

On (b) (6), (b) (7)(C) next shift, (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) and asked (b) (6), (b) (7)(C) about the boot. (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) had concerns that the boot might cause (b) (6), (b) (7)(C) to slip and injure (b) (6), (b) (7)(C) and that it was opened-toed, which could also cause injuries (associates are not permitted to wear open-toed shoes while working in (b) (6), (b) (7)(C) for safety reasons). (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) doctor knew where (b) (6), (b) (7)(C) worked and if the boot would be okay to wear while (b) (6), (b) (7)(C) performed (b) (6), (b) (7)(C) duties. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) doctor knew (b) (6), (b) (7)(C) worked in (b) (6), (b) (7)(C), but said (b) (6), (b) (7)(C) had a follow-up appointment

with (b) (6), (b) (7)(C) doctor the next day (on (b) (6), (b) (7)(C)) and that (b) (6), (b) (7)(C) would have more information at that time. (b) (6), (b) (7)(C) added that (b) (6), (b) (7)(C) was scheduled to work on (b) (6), (b) (7)(C) and asked if (b) (6), (b) (7)(C) could have the day off. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) would get with (b) (6), (b) (7)(C) to approve the absence (even though single absences for doctor's visits or illness are not usually considered authorized absences under the Attendance/Punctuality Policy).

(b) (6), (b) (7)(C) returned to work with light duty restrictions for the next three weeks, which included working fewer hours on (b) (6), (b) (7)(C) feet. [Tab 10.] At that time, (b) (6), (b) (7)(C) learned that the boot was non-slip and that (b) (6), (b) (7)(C) could wear it safely at work.

A few days later, on (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) showed up on the attendance report as having four occurrences as a result of (b) (6), (b) (7)(C) absence on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had 3.5 occurrences to that point). [Tab 11.] Based on the Attendance/Punctuality Policy, that fourth occurrence within six months should have resulted in (b) (6), (b) (7)(C) discharge. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) approved (b) (6), (b) (7)(C) absence so that (b) (6), (b) (7)(C) could visit (b) (6), (b) (7)(C) doctor for a follow-up appointment. Accordingly, (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to authorize the absence in the system so that it would not count as an occurrence and (b) (6), (b) (7)(C) would not be subjected to discharge. (b) (6), (b) (7)(C) approved the absence in the system on (b) (6), (b) (7)(C). [Id.] To that point, (b) (6), (b) (7)(C) had no knowledge about (b) (6), (b) (7)(C) attendance status.

The next few days ((b) (6), (b) (7)(C)), (b) (6), (b) (7)(C) left work early, which again resulted in (b) (6), (b) (7)(C) receiving additional attendance occurrences. (b) (6), (b) (7)(C) had also requested a leave absence, which Sedgwick had denied because (b) (6), (b) (7)(C) did not submit the proper medical certification from (b) (6), (b) (7)(C) doctor. Nevertheless, because (b) (6), (b) (7)(C) knew that (b) (6), (b) (7)(C) had difficulty with (b) (6), (b) (7)(C) foot, (b) (6), (b) (7)(C) decided to have (b) (6), (b) (7)(C) approve the occurrences on (b) (6), (b) (7)(C) and approve a leave of absence beginning on (b) (6), (b) (7)(C) until (b) (6), (b) (7)(C) doctor could release (b) (6), (b) (7)(C) to return to work. [Tabs 11, 12.]

(b) (6), (b) (7)(C) doctor released (b) (6), (b) (7)(C) to work without restrictions on (b) (6), (b) (7)(C). [Tab 13.] Upon returning to work, based on (b) (6), (b) (7)(C) previous discussion about transferring (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) to a (b) (6), (b) (7)(C) position, (b) (6), (b) (7)(C) began cross-training as (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) officially became a (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C). [Tab 14.]

(b) (6), (b) (7)(C) never surveilled (b) (6), (b) (7)(C) (or any other associates) when (b) (6), (b) (7)(C) conducted (b) (6), (b) (7)(C) store tours in (b) (6), (b) (7)(C) 2018 (or at any other time). To the extent that (b) (6), (b) (7)(C) looked at (b) (6), (b) (7)(C) during those store tours near (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) it related only to (b) (6), (b) (7)(C) wearing the boot and whether (b) (6), (b) (7)(C) was able to perform (b) (6), (b) (7)(C) job safely. During that time, (b) (6), (b) (7)(C) had no knowledge about (b) (6), (b) (7)(C) attendance status and (b) (6), (b) (7)(C) had never made any statements to (b) (6), (b) (7)(C) about how (b) (6), (b) (7)(C) felt about the Attendance/Punctuality Policy (or any other policy).

D. (b) (6), (b) (7)(C) Explained The Attendance/Punctuality Policy To (b) (6), (b) (7)(C) Because (b) (6), (b) (7)(C) Erroneously Believed And Stated That It Was Unlawful.

1. (b) (6), (b) (7)(C) Told (b) (6), (b) (7)(C) That (b) (6), (b) (7)(C) Had Been Sick And Was Concerned About (b) (6), (b) (7)(C) Absences.

Walmart's "Greet. Help. Thank." program "is the foundation of [Walmart's] customer service" and by using the program, Walmart "create[s] a place customers want to shop, feel appreciated and return for additional shopping." As part of their responsibilities, supervisors

“[o]bserve and train associates to ensure they deliver a Clean, Fast, and Friendly experience using the Greet. Help. Thank. criteria.” [Tab 15.]

In (b) (6), (b) (7)(C) 2018, (b) (6), (b) (7)(C) oversaw the Front End as part of the Greet. Help. Thank. program. As (b) (6), (b) (7)(C) did so, (b) (6), (b) (7)(C) approached to begin cashiering and (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) “How are you doing?” (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) was better than (b) (6), (b) (7)(C) was last week. (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) what (b) (6), (b) (7)(C) meant and (b) (6), (b) (7)(C) replied that last week (b) (6), (b) (7)(C) was sick, but (b) (6), (b) (7)(C) felt better now. (b) (6), (b) (7)(C) then said, “Walmart isn’t fair about absences when you are sick” and that “I know that I’m going to be fired.” (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) “You’re not going to get fired.” (b) (6), (b) (7)(C) then said, “I was sick on two days.” (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) gets up to three occurrences under the Attendance/Punctuality Policy. (b) (6), (b) (7)(C) then stated, “The policy is unfair because what if you get the flu and need more days off.” (b) (6), (b) (7)(C) further explained that if (b) (6), (b) (7)(C) was had the flu (b) (6), (b) (7)(C) should talk to a manager to explain the situation and they could work with (b) (6), (b) (7)(C) so that (b) (6), (b) (7)(C) did not get discharged. (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) would not talk with a manager because (b) (6), (b) (7)(C) believed the policy was unfair. (b) (6), (b) (7)(C) again explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) should talk with a manager because “they could figure it out if you are around four occurrences.” (b) (6), (b) (7)(C) added that in certain situations if associates need more time off, (b) (6), (b) (7)(C) will work with them and that (b) (6), (b) (7)(C) should “partner-up” with a manager to do the same. (b) (6), (b) (7)(C) then asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) was sick and that, if (b) (6), (b) (7)(C) was, they could let (b) (6), (b) (7)(C) go home. (b) (6), (b) (7)(C) said, “I’m okay” and went to (b) (6), (b) (7)(C) to continue working. The conversation lasted about five minutes.

(b) (6), (b) (7)(C) took over for (b) (6), (b) (7)(C) as the next supervisor to perform (b) (6), (b) (7)(C) Greet. Help. Thank. duties. Before doing so, (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) a brief recap about how (b) (6), (b) (7)(C) and other associates performed customer service in accordance with the program. (b) (6), (b) (7)(C) also mentioned that (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was sick, had concerns about (b) (6), (b) (7)(C) absences, and that (b) (6), (b) (7)(C) thought the Attendance/Punctuality Policy was unfair. (b) (6), (b) (7)(C) thanked (b) (6), (b) (7)(C) and they both continued working.

2. The Next Day (b) (6), (b) (7)(C) Told (b) (6), (b) (7)(C) That The Attendance Policy Was Unfair And Illegal.

The next day, (b) (6), (b) (7)(C) entered the Personnel Office and abruptly told (b) (6), (b) (7)(C) that that (b) (6), (b) (7)(C) did not think that Walmart’s Attendance/Punctuality Policy was fair because (b) (6), (b) (7)(C) was being held accountable for absences when (b) (6), (b) (7)(C) was sick. (b) (6), (b) (7)(C) appeared agitated. (b) (6), (b) (7)(C) thought that (b) (6), (b) (7)(C) checked (b) (6), (b) (7)(C) attendance record and that (b) (6), (b) (7)(C) must have been close to having four occurrences. (b) (6), (b) (7)(C) then said that (b) (6), (b) (7)(C) talked with people and (b) (6), (b) (7)(C) claimed that the policy was illegal. (b) (6), (b) (7)(C) added that it was wrong and that (b) (6), (b) (7)(C) could sue Walmart. Because (b) (6), (b) (7)(C) acted angry, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not discuss the issue with (b) (6), (b) (7)(C), but that (b) (6), (b) (7)(C) should talk with (b) (6), (b) (7)(C) as part of the Open Door process.

(b) (6), (b) (7)(C) left and told (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) conversation with (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) replied that (b) (6), (b) (7)(C) had talked with (b) (6), (b) (7)(C) the previous night about being sick and (b) (6), (b) (7)(C) concern about (b) (6), (b) (7)(C) absence occurrences. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that they should meet with (b) (6), (b) (7)(C) to explain the Attendance/Punctuality Policy to (b) (6), (b) (7)(C) because it seemed that (b) (6), (b) (7)(C) might not fully understand it based on (b) (6), (b) (7)(C) conversations with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was concerned that (b) (6), (b) (7)(C) was incorrectly explaining the Policy to other associates and managers at the store and (b) (6), (b) (7)(C) wanted to ensure that (b) (6), (b) (7)(C) understood the Policy so that if (b) (6), (b) (7)(C) talked about it (b) (6), (b) (7)(C) could accurately do so.

(b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to attend the meeting because (b) (6), (b) (7)(C) could help further explain the Policy since (b) (6), (b) (7)(C) trained (b) (6), (b) (7)(C) about it in orientation.

(b) (6), (b) (7)(C) then called (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) office. As (b) (6), (b) (7)(C) entered, (b) (6), (b) (7)(C) greeted (b) (6), (b) (7)(C) and pleasantly asked (b) (6), (b) (7)(C) to have a seat. (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C), "I hear that you are not feeling well." (b) (6), (b) (7)(C) angrily responded, "Yes, but I will lose my job." Taken aback, (b) (6), (b) (7)(C) replied that (b) (6), (b) (7)(C) thought that (b) (6), (b) (7)(C) might not understand the Company's Attendance/Punctuality Policy and that (b) (6), (b) (7)(C) wanted to make sure (b) (6), (b) (7)(C) understood it. (b) (6), (b) (7)(C) then explained that Walmart gives new associates three absence occurrences within in their first six months of employment before they are subjected to discharge if they get a fourth occurrence during that time frame. Still upset, (b) (6), (b) (7)(C) replied that Walmart could not fire an associate for being sick and that it was a violation of state law to do so.

(b) (6), (b) (7)(C) explained the Policy again, including that only certain absences are excused. But, (b) (6), (b) (7)(C) seemed like (b) (6), (b) (7)(C) was not fully listening as (b) (6), (b) (7)(C) rolled (b) (6), (b) (7)(C) eyes and shook (b) (6), (b) (7)(C) head. (b) (6), (b) (7)(C) similarly explained the Policy and told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had learned about it during orientation. (b) (6), (b) (7)(C) then asked (b) (6), (b) (7)(C) how many occurrences (b) (6), (b) (7)(C) had at that time. (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) had checked and (b) (6), (b) (7)(C) had 3.5 occurrences. (b) (6), (b) (7)(C) then asked (b) (6), (b) (7)(C) how long (b) (6), (b) (7)(C) had worked at Walmart because once (b) (6), (b) (7)(C) got to six months of employment (b) (6), (b) (7)(C) would be allowed eight occurrences in a twelve month period before being subjected to discharge upon receiving a ninth occurrence.

(b) (6), (b) (7)(C) then told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had approved a prior absence that was showing up on (b) (6), (b) (7)(C) record as an occurrence. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had approved (b) (6), (b) (7)(C) recent unauthorized absences. However, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was referring to an older absence. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) walked past (b) (6), (b) (7)(C) office a few months back and told (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was going home because (b) (6), (b) (7)(C) didn't feel well and that (b) (6), (b) (7)(C) approved it. (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) did not approve it, and that (b) (6), (b) (7)(C) remembered that (b) (6), (b) (7)(C) only acknowledged (b) (6), (b) (7)(C) statement as (b) (6), (b) (7)(C) walked past (b) (6), (b) (7)(C) office. (b) (6), (b) (7)(C) disagreed and again said that (b) (6), (b) (7)(C) approved the absence. (b) (6), (b) (7)(C) responded to (b) (6), (b) (7)(C) that "it's clear that we are not going to agree on this" and (b) (6), (b) (7)(C) again rolled (b) (6), (b) (7)(C) eyes and shook (b) (6), (b) (7)(C) head in an agitated manner. In an effort to calm (b) (6), (b) (7)(C) down and relieve (b) (6), (b) (7)(C) concerns about (b) (6), (b) (7)(C) absences, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that this was just a verbal discussion to discuss (b) (6), (b) (7)(C) understanding of the Policy.

Still upset, (b) (6), (b) (7)(C) stated that Walmart's Attendance/Punctuality Policy cannot override state law and that Walmart cannot fire associates for being sick. (b) (6), (b) (7)(C) responded that "Walmart has been around a long time, it follows state law, and that it can terminate associates based on the Attendance/Punctuality policy."

(b) (6), (b) (7)(C) said, "(b) (6), (b) (7)(C), I can see that you are sick and I understand where you are with your attendance. Do you need to go home? If so, I will approve it today. I will go into the system and approve it myself." (b) (6), (b) (7)(C) replied, "I don't need to go home today." (b) (6), (b) (7)(C) then said, "(b) (6), (b) (7)(C) you know you can always get with management to discuss your concerns and any questions you have as you have done so with me in the past. If you weren't feeling well, you could have gotten with me to explain your situation. I have a heart and I can see that you are sick. I will approve you going home." (b) (6), (b) (7)(C) stated, "I needed the day off earlier, but not today." (b) (6), (b) (7)(C) stood up and

said, "Okay, if you need to go home early, just let me know and I will approve it." (b) (6), (b) (7)(C) said, "Okay," got up and went back to work.

At no time did (b) (6), (b) (7)(C) consider the meeting with (b) (6), (b) (7)(C) to be disciplinary for several reasons. First, if (b) (6), (b) (7)(C) intended it to be a disciplinary meeting, (b) (6), (b) (7)(C) would not have had (b) (6), (b) (7)(C) attend because only Co-Managers, Assistant Managers, and Support Managers can serve as a witness to a meeting to issue discipline under the Company's Coaching for Improvement Policy. [Tab 16.] Second, Walmart's progressive disciplinary Coaching for Improvement Policy does not provide for verbal discussions (or verbal warnings). Rather the Policy provides multiple written steps of discipline. In particular, the Coaching for Improvement Policy provides that an associate may receive a "First Written coaching" under the disciplinary process. Thereafter, Walmart may impose subsequent levels of discipline for additional violations of Company policies within a 12-month period; i.e., "Second Written coaching," "Third Written coaching," or discharge. [Id.] (b) (6), (b) (7)(C) never issued (b) (6), (b) (7)(C) any discipline under the Coaching for Improvement Policy related to (b) (6), (b) (7)(C) discussions with other associates or managers about the Attendance/Punctuality Policy (or any other policies). [Tab 17.]

The meeting lasted about 10 minutes. (b) (6), (b) (7)(C) has not had any further discussions with (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) absences or the Attendance/Punctuality Policy.²

II. LEGAL ANALYSIS.

A. (b) (6), (b) (7)(C) Did Not Interrogate (b) (6), (b) (7)(C) About (b) (6), (b) (7)(C) Conversations With Other Associates And Managers.

The Board analyzes "interrogation" allegations under the seminal *Rossmore House* decision. 269 NLRB 1176, 1177 (1984).³ But there is no *Rossmore House* analysis here because

² (b) (6), (b) (7)(C) believes that, sometime after (b) (6), (b) (7)(C) meeting with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) in passing (near the back room) that two associates reported to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) complained to them that (b) (6), (b) (7)(C) thought the Attendance/Punctuality Policy was unfair. (b) (6), (b) (7)(C) said okay and their brief conversation ended. (b) (6), (b) (7)(C) did not feel the need to follow up with (b) (6), (b) (7)(C).

³ The Board analyzes the coercion question by taking into account all relevant circumstances. *Id.* "Among the factors considered in determining whether an interrogation is unlawful are: (1) the background of the questioning (*i.e.*, is there a history of employer hostility to the union activity), (2) the nature of the information sought (*i.e.*, did the supervisor seek information on which to base adverse action against individual employees?), (3) the identity of the questioner (*i.e.*, how high up in the chain of command?), (4) the place and method of the questioning (*i.e.*, was the employee called from work to the boss's office? Was there an atmosphere of unnatural formality?), and (5) whether the person being questioned is an open and ardent union adherent." *Id.*; see also *Exterior Systems, Inc.*, 338 NLRB 677, 698 (2002) (no unlawful interrogation where the employer asked an employee who previously volunteered his union affiliation about the union's status, and the conversation was brief, friendly in tone, not repeated, and occurred during lunch); *Webco Industries*, 334 NLRB 608, 621 (2001)

(Continued...)

(b) (6), (b) (7)(C) did not ask (b) (6), (b) (7)(C) (or any other employees) questions about their protected activities. In fact, (b) (6), (b) (7)(C) did not ask (b) (6), (b) (7)(C) any questions other than if (b) (6), (b) (7)(C) needed to go home because (b) (6), (b) (7)(C) was sick. Here, (b) (6), (b) (7)(C) knew that (b) (6), (b) (7)(C) voluntarily initiated two conversations with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) discussed with them that (b) (6), (b) (7)(C) believed Walmart's Attendance/Punctuality Policy was unfair and unlawful. (b) (6), (b) (7)(C) also knew that (b) (6), (b) (7)(C) discussed that (b) (6), (b) (7)(C) believed that Walmart could not discharge associates for absences when they were sick. As such, when (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had no reason to ask (b) (6), (b) (7)(C) any questions about what (b) (6), (b) (7)(C) had discussed during (b) (6), (b) (7)(C) conversations with (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) (or anyone else). Rather, (b) (6), (b) (7)(C) simply stated that (b) (6), (b) (7)(C) thought (b) (6), (b) (7)(C) might not understand the Attendance/Punctuality Policy and that (b) (6), (b) (7)(C) wanted to explain it to (b) (6), (b) (7)(C) to ensure that (b) (6), (b) (7)(C) understood it correctly so that if (b) (6), (b) (7)(C) discussed it with other associates (b) (6), (b) (7)(C) could do so accurately.

(b) (6), (b) (7)(C) statement to (b) (6), (b) (7)(C) does not approach unlawful interrogation under the Act. Even if it had been interrogation (it was not), it was so *de minimis* as to not violate the Act. See *Exterior Systems*, 338 NLRB at 698 (no unlawful interrogation where the employer asked an employee who previously volunteered his union affiliation about the union's status, and the conversation was brief, friendly in tone, not repeated); *Webco Industries*, 334 NLRB 608, 621 (2001) (interrogation lasting a few minutes with open and active union adherent not unlawfully coercive); *Century Wine & Spirits*, 317 NLRB 1139 (1995) (a single isolated instance of alleged unlawful interrogation was *de minimis* and did not require an exercise of the Board's remedial authority).

Based on the foregoing, Walmart did not unlawfully interrogate (b) (6), (b) (7)(C).

B. (b) (6), (b) (7)(C) Did Not Unlawfully Threaten (b) (6), (b) (7)(C) With Discipline For Discussing Walmart's Policies.

The test for determining whether an employer's statement is an impermissible threat is whether the statement can reasonably be interpreted under the totality of circumstances to predict an adverse consequence within the employer's control if the employee engages in protected activity. *Mediplex of Danbury*, 314 NLRB 470, 471 (1994). Moreover, in deciding whether a remark is threatening in violation of Section 8(a)(1), the Board applies the objective standard of whether the remark would reasonably tend to interfere with the free exercise of employee Section 7 rights. *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), *enfd.* 134 F.3d 1307 (7th Cir. 1998).

At no time during their meeting did (b) (6), (b) (7)(C) threaten (b) (6), (b) (7)(C) with discipline for discussing Walmart's policies with other associates. Again, the purpose of the meeting was to ensure that (b) (6), (b) (7)(C) understood the Attendance/Punctuality Policy as it related to (b) (6), (b) (7)(C) own absences and so that if (b) (6), (b) (7)(C) talked about it with other associates (b) (6), (b) (7)(C) could do so accurately. Not once during their conversation did (b) (6), (b) (7)(C) use the term "discipline," "discharge," or "terminate" or imply that (b) (6), (b) (7)(C) would take such action because (b) (6), (b) (7)(C) discussed the Policy with other associates. In fact, (b) (6), (b) (7)(C)

(interrogation lasting a few minutes with open and active union adherent not unlawfully coercive).

never mentioned Walmart's progressive disciplinary Coaching for Improvement Policy during their meeting – which is the Company's sole disciplinary process – because the meeting was never intended to be a disciplinary meeting (it could not be without a particular level of manager serving as a witness).

To the extent that (b) (6), (b) (7)(C) tried to calm (b) (6), (b) (7)(C) down when (b) (6), (b) (7)(C) became agitated and upset by emphasizing that they were only having a “verbal discussion,” on its face, that statement did not constitute an unlawful threat because it did not forecast any adverse action arising out of protected activity. Nor would that statement (or any of (b) (6), (b) (7)(C) other statements as discussed above) reasonably tend to interfere with the free exercise of (b) (6), (b) (7)(C) Section 7 rights. Indeed, Walmart's Coaching for Improvement Policy does not include “verbal discussions” (or verbal warnings) as a step in the disciplinary process as the only levels of discipline involve written discipline (*i.e.*, written coachings). *See e.g., Altercare of Wadsworth Center for Rehabilitation & Nursing Care*, 355 NLRB 565, 565 (2010) (verbal counselings or warnings that do not count for purposes of progressive discipline and do not lay a foundation for future disciplinary action do not support a violation of the Act).

C. (b) (6), (b) (7)(C) Did Not Tell (b) (6), (b) (7)(C) It Would Be Futile To Contact The Government To Report Alleged Violations Of State And Federal Law.

The Act explicitly protects an employer's right to freely express “any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form . . . if such expression contains no threat of reprisal or force or promise of benefit.” 29 U.S.C. § 158(c); *see also Rogers Elec., Inc.* 346 NLTB 508, 509 (2006) (same). The test for determining whether an employer's statement is an impermissible threat of futility is reviewed under the totality of the circumstances. *Public Service Co. of New Mexico*, 360 NLRB 573, 594 (2014).

Here, in response to (b) (6), (b) (7)(C) statement that (b) (6), (b) (7)(C) believed Walmart's Attendance/Punctuality Policy violated the law, (b) (6), (b) (7)(C) did not tell (b) (6), (b) (7)(C) (or any other associates) that contacting the government about alleged violations of state and federal law would be futile because Walmart is a big corporation and can out rule the law. Rather, based on (b) (6), (b) (7)(C) knowledge of New Mexico law and (b) (6), (b) (7)(C) belief that Walmart's Attendance/Punctuality Policy is lawful (it is), (b) (6), (b) (7)(C) simply responded that “Walmart has been around a long time, it follows state law, and that it can terminate associates based on the Attendance/Punctuality policy” – all true and lawful statements. Taken in context, (b) (6), (b) (7)(C) statement does not constitute an unlawful threat of futility. *Public Service Co. of New Mexico*, 360 NLRB at 573 fn. 3, 594 (finding no unlawful threat where evidence supported that manager did not make statement that filing charges with the Board would be futile and when actual statement taken in context could not constitute an unlawful threat of futility).

D. The Allegations Involving The Promulgation Of An Overly Broad Rule, That Walmart Issued (b) (6), (b) (7)(C) A Verbal Warning, And That Walmart Surveilled (b) (6), (b) (7)(C) Fail For Several Reasons.

1. The Three New Allegations Fail Because Those Allegations Were Not Raised In The Original Charge.

(b) (6), (b) (7)(C) April 3 Charge alleged only that Walmart violated the Act by “interrogating employees about their protected concerted activities, threatening employees with discipline for discussing terms and conditions of employment, and telling employees that discussions of terms and conditions of employment or seeking assistance from state or federal agencies was futile.” In its April 17 correspondence, the Region added three new allegations: (1) “(b) (6), (b) (7)(C) promulgated an overly broad and discriminatory rule prohibiting employees from discussing Walmart policies with one another;” (2) “the Employer issued (b) (6), (b) (7)(C) a verbal warning because (b) (6), (b) (7)(C) engaged in protected activities;” and (3) that “[b]eginning in (b) (6), (b) (7)(C) 2018 (b) (6), (b) (7)(C) surveilled employee communications with other employees.” Those new allegations do not relate to the allegations in the Charge. As such, the Region cannot process those allegations. *Allied Waste Svcs. of Fall River*, 01-CA-123082, 2014 WL 7429200 (NLRB Dec. 31, 2014) (The Board’s “authority to investigate matters ‘related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board’ does *not* mean the Board has ‘carte blanche to expand the charge as [it] might please’”) (quoting *NLRB v. Fant Milling Co.*, 360 U.S. 301, 308-09 (1959); *Nickles Bakery of Indiana*, 296 NLRB 927, 928 (1989) (complaint cannot issue on allegations that do not involve the same legal theory as the allegations in the pending charge and where respondent would not raise similar defenses to both allegations).

Indeed, those new allegations involve completely different legal theories than those discussed above involving (b) (6), (b) (7)(C) interrogation, threat of discipline, and threat of futility allegations. In particular, all three new allegations involve completely different analyses and defenses under *The Boeing Company*, 365 No. 154 (Dec. 15, 2017) (work rule promulgation), *Wright Line*, 251 NLRB 1083 (1980) (discrimination/retaliation claims), and *Contempora Fabrics, Inc.*, 344 NLRB 851, 865 (2005) (surveillance).

2. (b) (6), (b) (7)(C) Did Not Promulgate An Overly Broad Rule.

The Region’s April 17 correspondence adds the new allegation that in (b) (6), (b) (7)(C) 2018, (b) (6), (b) (7)(C) promulgated an overly broad and discriminatory rule prohibiting employees from discussing Walmart policies with one another. That allegation fails for additional reasons. First, Walmart does not maintain a policy, directive, or other rule that prohibits associates from discussing Company policies with one another. Second, (b) (6), (b) (7)(C) statements to (b) (6), (b) (7)(C) during their meeting in early (b) (6), (b) (7)(C) 2018 did not promulgate a work rule prohibiting (b) (6), (b) (7)(C) from discussing policies with other associates. Rather, (b) (6), (b) (7)(C) merely explained that (b) (6), (b) (7)(C) had heard that (b) (6), (b) (7)(C) had discussed with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) belief that Walmart’s Attendance/Punctuality Policy was unfair and unlawful. As discussed above, (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) to help (b) (6), (b) (7)(C) understand the Policy so that if (b) (6), (b) (7)(C) continued to discuss it with other associates (b) (6), (b) (7)(C) would be able to do so accurately. (b) (6), (b) (7)(C) never told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could not discuss Walmart policies with other associates. Thus, (b) (6), (b) (7)(C) statements lacked the defining characteristics of a “work rule.”

See, e.g., *Flamingo Las Vegas Operating Co.*, 360 NLRB 243, 243 fn. 5 (2014) (statement directed solely to one employee and never repeated to any other employees did not constitute a work rule).

3. Walmart Did Not Issue (b) (6), (b) (7)(C) A Verbal Warning; Even If It Did, It Would Not Constitute A Violation Of The Act.

In the Region's April 17, 2018 correspondence, it adds a new allegation that Walmart issued (b) (6), (b) (7)(C) a verbal warning because (b) (6), (b) (7)(C) engaged in protected concerted activities. As discussed above, at no time did (b) (6), (b) (7)(C) issue a verbal warning to (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) conversations with others about the Attendance/Punctuality Policy (or for any other purported protected activity). Even if (b) (6), (b) (7)(C) did issue a verbal warning (b) (6), (b) (7)(C) did not), any such warning would not rise to the level of discipline to violate the Act. Where an oral reminder "merely warns an employee of potential performance or behavior problems" and is not part of a "formal disciplinary procedure," it does not qualify as an adverse employment action. *Lancaster Fairfield Comm. Hosp.*, 311 NLRB 401, 403 (1993) (holding conference report regarding employee's disruptive behavior did not violate the Act because it "constituted nothing more than counseling" and "did not affect any term or condition of employment"). Consequently, this new allegation fails under *Wright Line*, 251 NLRB 1083 (1980).

4. (b) (6), (b) (7)(C) Did Not Unlawfully Surveil (b) (6), (b) (7)(C).

The test for determining whether an employer engages in unlawful surveillance is an objective one and involves the determination of whether the employer's conduct, under the circumstances, was such as would tend to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under Section 7 of the Act. *Contempora Fabrics, Inc.*, 344 NLRB 851, 865 (2005) (citing *Broadway*, 267 NLRB 385, 400 (1983) and *United States Steel Corp. v. NLRB*, 682 F.2d 98 (3d Cir. 1982)) (emphasis added).

The Board has long held that managers do not violate the Act by "watching" employees work, even when such employees may be engaging in protected activity. See *Contempora Fabrics, Inc.*, 344 NLRB 851, 865 (2005) (supervisors did not engage in unlawful surveillance where they were regularly in the inspection areas and production floor as part of their duties); *American Furniture Co.*, 293 NLRB 408, 412-13 (1989) (employer did not unlawfully increase supervision of pro-union employee, but rather had legitimate business reason for closely observing production process); *Liberty Nursing Homes*, 245 NLRB 1194, 1200-1201 (1979) (closely observing employees at work was lawful because decision was predicated upon legitimate considerations); *Mt. Vernon-Woodberry Mills, Inc.*, 64 NLRB 294, 296-97 (1945) (alleged observation by supervisor confined to working time and necessary to his supervisory position did not violate Act).

In *Contempora Fabrics, Inc.*, 344 NLRB at 859 the employer allegedly engaged in unlawful surveillance based on several supervisors' presence in the inspection area and production floor. One supervisor had a practice of coming in early to prepare for his shift, which included about fifteen minutes in the inspection area. *Id.* One employee testified that, in the week prior to the election, this supervisor had stayed in the inspection area for 30 minutes, which he had never done before; the supervisor denied this allegation. *Id.* Additionally, another employee testified that several supervisors stood at the end of the aisles during the work shifts. *Id.*

According to one supervisor, it was part of their duties to be present on the production floor. *Id.* She conceded that they were out on the floor even more than usual during the election campaign in order to answer employee questions; however, she testified that the supervisors never stood at the end of the aisles in order to watch employees, nor were they instructed to do so. *Id.*

The administrative law judge found no unlawful surveillance as there was no “evidence that supervisors were engaged in any activities inconsistent with their normal responsibilities or in physical locations other than where they were required to perform those responsibilities.” *Id.* at 865. The judge recognized that management may observe union activities conducted openly so long as there is no “conspicuous surveillance [that] interferes with the lawful activity.” *Id.*; see also *Aladdin Gaming, LLC*, 345 NLRB No. 41 (2005) (no surveillance where managers’ presence in the dining room, where both employees and managers dined, “was routine and not ‘out of the ordinary’”).

Here, (b) (6), (b) (7)(C) vaguely asserts that (b) (6), (b) (7)(C) surveilled (b) (6), (b) (7)(C) communications with other associates in the workplace. Given (b) (6), (b) (7)(C) extensive on-the-floor duties described above, there is nothing unusual or “out of the ordinary” about (b) (6), (b) (7)(C) observing (b) (6), (b) (7)(C) or any other associate as (b) (6), (b) (7)(C) walked past them on the sales floor for a few brief periods throughout the day; particularly where, as here, the only activity that (b) (6), (b) (7)(C) purposefully observed regarding (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) wearing a boot on (b) (6), (b) (7)(C) foot, which prompted (b) (6), (b) (7)(C) concern for (b) (6), (b) (7)(C) safety. *WestPac Electric*, 321 NLRB 1322, 1380-81 (1996) (no unlawful surveillance where management did not engage in “suspicious behavior” or “untoward conduct”); *Metal Industries*, 251 NLRB 1523, 1523 (1980) (no surveillance where management did nothing “out of the ordinary”).

Notably, Walmart requires its managers to regularly walk the various departments throughout the store multiple times each day. That is their job. As part of that job, they observe associates to make sure they do their assigned tasks, ensure excellent customer service, and conduct Coaching By Walking Around, as required by Walmart policy. No surveillance can exist where management engages in routine managerial activities near employees who may be openly engaging in purported protected activity. See *Wal-Mart Stores, Inc.*, 350 NLRB 879, 882-83 (2007) (no surveillance or impression of surveillance where employee openly handed out union pens in work area and sales floor “where employees could reasonably expect management officials to be present in the ordinary course of business”).

III. CONCLUSION.

For the foregoing reasons, Walmart did not violate the Act as alleged, and the Company respectfully requests that the Region dismiss (b) (6), (b) (7)(C) Charge absent withdrawal. Please contact us with any questions or if you require additional information.⁴

Kind regards,



Steven D. Wheelless
Alan Bayless Feldman

⁴ As requested, Walmart provides (b) (6), (b) (7)(C) personnel file at Tab 18. Walmart submits the information in this letter for the sole purpose of resolving (b) (6), (b) (7)(C) Charge and does so based on the minimal information provided by the Region. Given those constraints, Walmart may not know material information that could alter, modify, moot, or change the discussion provided here. Therefore, Walmart does not intend that this position statement constitute a complete or comprehensive statement of facts or Walmart's legal position, which could change based on additional information. Walmart specifically reserves all rights and defenses it now or may later possess concerning the Charge or related issues. Walmart further requests that the NLRB keep all information related to (b) (6), (b) (7)(C) Charge confidential to the fullest extent permitted by law.

Tab 1

**ASSOCIATES DO NOT WRITE ON THIS PAGE
TO BE COMPLETED BY THE PERSONNEL ASSOCIATE**

(b) (6), (b) (7)(C)

Associate Name: _____

SMART System only

Facility Number: 3731

Associate ID Number: _____

Hire Date: (b) (6), (b) (7)(C)

Associate Status: (b) (6), (b) (7)(C)

Division Number: (b) (6), (b) (7)(C) (MM/DD/YY)

(FULL-TIME, PART-TIME, PEAK-
(b) (6), (b) (7)(C))

Depart. Number: (b) (6), (b) (7)(C)

Job Code: (b) (6), (b) (7)(C)

Pay Rate: 19

Logistics T&A only

Marital Status: (b) (6), (b) (7)(C)

Exemptions: (b) (6), (b) (7)(C)

Facility No. _____

Hire Date: _____
(MM/DD/YY)

Badge No. _____

Shift Hours _____ Shift Differential _____

Scheduled Work Days _____

W/E Schedule Pay _____ Other Premium Pay _____

Account (Work Location) No. _____

Operations Code _____ Work Area Code _____

Job Function Code _____

Home Clock _____ Access Control _____

Associate Status _____

Schedule No. _____ Pay Rules _____

Pay Code _____ Pay Change _____

Work Class _____ Wage Class _____ Pay Rate _____

Base Rate _____

Withholding Tax Information: Use Associate Federal/State/Local Forms

License Information for OTR/Yard/City-Local Drivers and Managers

Non-Clerical Service Shop and Refurb Shop Associates

Driver's License State _____

Driver's License # _____

Driver's License Expiration Date _____

Physical Examination Due Date _____

(Only to be completed by CDL Licensed Driver)

Information in T&A _____

Driver Information in VDS _____

Date/Initials

Date/Initials

Tab 2

ATTACHMENT/EXHIBIT TO POSITION
STATEMENT WITHHELD PURSUANT TO
EXEMPTIONS 6 and 7(C)

Tab 3

Attendance/Punctuality Policy - New Mexico

Updated: October 15, 2016

One of Walmart's basic beliefs is service to our customers. In order to provide extraordinary customer service, we must have the right associate, in the right place, at the right time. To accomplish this, as a Walmart hourly store associate, you should be both punctual and present for all scheduled shifts. We understand that you may have to miss work on occasion. However, regular and punctual attendance is a required and essential function of each associate's job. If you have excessive absences or incomplete shifts (arriving late or leaving early), you may be subject to termination. When possible, you should schedule time off in advance to avoid negatively affecting other associates, customers, and the company.

This policy applies to all hourly associates who work for Wal-Mart Stores, Inc., or one of its subsidiary companies, in **New Mexico**, except for Logistics, Home Office and Sam's Club associates.

Responsibility to Notify Management

You must make every effort to report absences or late arrivals (tardies) at least one hour prior to your scheduled start time, unless it would be unreasonable to expect you to report the absence due to circumstances outside of your control. Absences or late arrivals must be reported by calling the Associate Information Line call-in number at 800-775-5944 or by using the Report an Absence form available on WalmartOne. Failure to report absences or late arrivals through one of these two methods will result in your absence or late arrival counted as a No Call/No Show (see chart below).

The Associate Information Line and the Report an Absence form will generate a unique confirmation number. You should retain this confirmation number in case your HR representative needs it when you return to work. Reporting an absence or late arrival does not mean that it will be Authorized (see below). If you are unable to use one of the two methods described above, you may have another person report your absence or late arrival. If the Associate Information Line and the Report an Absence form on WalmartOne are not available for your store for any reason, you must report all absences and late arrivals directly to a member of management.

Types of Absences

Authorized Absences

If you are absent from a scheduled shift or work an incomplete shift for a reason that is Authorized, the absence/incomplete shift will not be considered part of your attendance record and will not result in disciplinary action. The types of Authorized absences are:

Bereavement

Extraordinary circumstances approved by MHRM

Participation in legal proceedings

Community emergency volunteer time

Jury duty

Reasonable accommodation

Crime victim proceedings

Leave of absence

Voting time

Natural disasters, such as hurricanes, earthquakes, blizzards or tornadoes

Workers' compensation

Any Other Absence Protected by Law

If you need to be absent for longer than three scheduled shifts, you should talk to your HR representative about applying for a leave of absence. Your HR representative can assist you with the application process.

Unauthorized Absences

An unauthorized absence means any time you are away from a scheduled shift for a reason that is not Authorized or approved by your supervisor or manager, even if you use an income replacement benefit (such as PTO) to offset lost work time. An unauthorized absence may result from arriving late or leaving early, as well as missing entire scheduled shifts. If you are absent for consecutive days, each shift you miss will be a separate unauthorized absence. Time off work to comply with the dress code will also be considered unauthorized for attendance purposes.

Occurrences

Each unauthorized absence will result in a partial occurrence or one or more full occurrences (see chart below). If you accumulate nine (9) or more occurrences in a rolling six-month period, through any combination, you will be subject to termination. For example, if you have eight (8) occurrences and receive an additional occurrence due to an unauthorized absence within the same six month period of time, you will be subject to termination. If you have eight (8) occurrences and receive half of an occurrence due to a LATE IN or EARLY OUT exception, you will not be subject to termination because you have not reached nine (9) occurrences. Working additional hours to make up lost work time will not excuse an unauthorized absence.

Occurrences for New Hires

Associates who have been employed for six (6) months or less since their most recent hire date are considered new hires. If a new hire accumulates four (4) or more occurrences in his or her first six (6) months of employment, through any combination, he or she is subject to termination. For example, if a new hire has three (3) occurrences and receives an additional occurrence due to an unauthorized absence within the first six months of employment, he or she is subject to termination. If a new hire has three (3) occurrences and receives half of an occurrence due to a LATE IN or EARLY OUT exception, the associate is not subject to termination because he or she has not accumulated four (4) occurrences.

After the first six months of employment, occurrences accumulated within the first six months will still be considered within the applicable rolling six-month period for purposes of determining if you have nine (9) or more occurrences. For example, if you were hired on January 1, and you have an occurrence on September 30 of that year, your occurrences from April 1 through September 30 will be considered.

No Call/No Show

If you are absent from a scheduled shift and do not report the absence to the Associate Information Line 800 number or the Report an Absence form on WalmartOne, you will receive a total of three (3) occurrences for the no call/no show and one (1) occurrence for the absence, resulting in a total of four (4) occurrences. If you do not report an absence on time, and after the fact your absence is authorized according to this policy, you may still be held accountable for the three (3) occurrences for the no call/no show. If you are absent for three workdays (consecutive or non-consecutive) in a rolling six-month period and do not report your absences by calling the Associate Information Line or using the WalmartOne web form, we will consider you to have abandoned your job, which will result in your voluntary termination of employment.

The chart below shows the number of occurrences that will be applied for specific unauthorized attendance exceptions.

Attendance Exception Type	Attendance Exception Definition	Occurrences
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ABSENT	An associate has a scheduled shift but does not clock in within the schedule start and end time.	1
ABSENT NO CALL	<p>An associate has an ABSENT attendance exception AND did not use one of the following methods to report the absence:</p> <ol style="list-style-type: none"> 1. A call-in to the Associate Information Line (IVR) 800 number 2. A web form submitted using the Report an Absence form on WalmartOne. <p><i>Note: Each unauthorized Absent No Call incident will have a total point value of 4 points. Absent No Call (3 Points) + Absent (1 Point) = 4 Points.</i></p>	3
LATE IN	An associate's clock in time is 10 or more minutes after the scheduled shift start time and no more than 120 minutes after the scheduled shift start time.	0.5
ABSENT LATE IN	Clock In time is more than 120 minutes after the scheduled shift start time.	1
EARLY OUT	An associate's clock out time is 10 or more minutes before the scheduled shift end time and no more than 120 minutes before the scheduled shift end time.	0.5
ABSENT EARLY OUT	Clock Out time is more than 120 minutes before the shift end time.	1

Leave of Absence

If an associate submits a request for a leave of absence (LOA) to Sedgwick, the associate must still report missed shifts as absences until the store receives notification from Sedgwick that an LOA has been requested. Failure to do so will result in the shift being coded as a No Call/No Show, and if the LOA is denied, the store must apply the appropriate number of occurrences. When an associate requests an LOA, any scheduled shifts missed after the request will be coded as conditional until Sedgwick approves or denies the request. Absences during the approved leave dates will be considered authorized.

If the request is denied, or if the approved LOA does not cover all missed shifts, missed shifts outside of any approved leave dates will be considered unauthorized absences. **The first three (3) unauthorized absences outside of any approved leave dates will be occurrences for purposes of this policy and will be considered within the applicable rolling six-month period to determine if the associate is subject to termination.** No more than three (3) occurrences will be considered for time missed after the LOA request and prior to Sedgwick's decision on the request. However, an associate who continues to miss shifts after a request is denied, or after the last approved day of the LOA, will incur additional occurrences unless the absences are otherwise authorized.

For More Information

If you have questions or need further guidance, please contact your HR representative.

Tab 4

Personal Leave of Absence Policy

Updated: March 1, 2018

At Walmart, we understand that you may occasionally need time away from work due to special circumstances that don't qualify for leave under any federal or state law. When you meet certain criteria, you may be eligible for a personal leave of absence.

This policy applies to all associates who work for Walmart Inc., or one of its subsidiary companies in the United States (Walmart).

Managers and supervisors should use the supplemental Personal Leave Management Guidelines for additional guidance in administering the policy.

Your responsibilities

Pay and benefits during personal leave

Returning from personal leave

Appealing a Leave of Absence decision

Leave overview

You may need to take a personal leave for numerous reasons. Contact Sedgwick and your manager if you are absent from work for more than three days, so they can help you determine whether you are eligible for a leave of absence.

Please refer to the Personal Leave of Absence Overview documents for a snapshot of the types of personal leave you may use, the length of leave available and when you are eligible to use each type.

Hourly Associates Personal Leave Overview

Salaried Associates US eCommerce Locations Personal Leave Overview

Salaried Associates/Truck Drivers Personal Leave Overview

Personal leave is available as a continuous leave only and is not available on an intermittent or reduced schedule basis, unless approved as a reasonable accommodation under the Accommodation in Employment (Medical-Related) Policy or in accordance with a Parental Leave of Absence. If approved, a parental leave of absence covered by the Parental Pay - Salaried Associates US eCommerce Locations or the Parental Pay - FT Hourly Associates US eCommerce Locations policy can be taken in one week increments.

Personal leave may not be taken for the purpose of accepting or continuing employment with another employer or to begin or further a self-employment venture. Under certain limited circumstances, the company may grant additional personal leave, up to a maximum of 52 weeks including all leaves.

If you need to extend your leave beyond 52 weeks due to a condition that you believe qualifies as a disability, you must submit a Request for Extension of Medical Leave Form at least 30 days before you complete 52 weeks of leave. The company will determine (a) whether you are a qualified individual with a disability and (b) whether it is reasonable to extend the leave for a specific period of time.

Contact Sedgwick at 1-800-492-5678 or ViaOne Express to apply for a leave, obtain assistance in determining the amount of personal leave you have available or if you are on a workers' compensation related leave and are unable to return to work within 52 weeks.

Your responsibilities

- Provide reasonable advance notice and accurate information to your manager as well as Sedgwick.

- Contact Sedgwick to request your personal leave. If you cannot personally contact Sedgwick due to an emergency, a family member or other responsible party may give notice on your behalf.
- Complete and return all applicable forms provided by Sedgwick.
- Use the leave for the reasons requested and approved. Failure to do so may result in your leave being denied or subject you to disciplinary actions up to and including termination.
- Notify Sedgwick if you need to request an extension of your personal leave and provide any supplemental information that may be requested in order to make a decision on your request. If you fail to return to work or notify Sedgwick of the need to extend your personal leave, you may be deemed to have voluntarily terminated your employment with Walmart, except where prohibited by law.

Pay and benefits during personal leave

Personal leave is unpaid, except as described below:

- You may use your available PTO as outlined in your PTO Policy or other income replacement benefits, depending on the reason for your leave.
- You may qualify for short-term or long-term disability benefits. To apply for disability benefits, contact Sedgwick at 1-800-492-5678.
- You may qualify for workers' compensation benefits.

Regardless of whether you receive any pay during your personal leave, all personal leaves will be counted as part of your available leave under this policy.

To review information regarding your insurance benefits during personal leave, [click here](#).

To review information regarding other benefits during personal leave, [click here](#).

Returning from personal leave

Notice of intent to return to work

If you are returning from personal leave due to your own serious health condition, you must provide a written release completed by your health care provider before you will be permitted to return to work. You should submit this to both your HR representative and Sedgwick three days before you intend to return to work. If your health care provider releases you with restrictions you may still be able to return to work, depending on the nature of your restrictions and the requirements of your position. Please refer to the Leave of Absence Toolkit for additional instructions in the event that the associate's medical restrictions conflict with the associate's essential job functions.

If you are returning to work from personal leave based on reasons other than your own serious health condition, you must contact both your HR representative and Sedgwick before you intend to return to work.

Position upon return from personal leave

Note: This section does not apply to leave for reassignment due to ADA. Leave for this purpose is governed by the Accommodation in Employment (Medical Related) Policy.

Except in very limited circumstances, when you return from any leave you take under this policy, you are not guaranteed any position, including your previous position.

If your position is not available or if you are no longer able to perform the essential functions of your position, Walmart will make reasonable efforts to assist you in applying for open positions that you are qualified to perform, based on the facility's needs at the time you return. Your schedule and pay rate will be appropriate to the position offered. Depending on your circumstances, you may also be eligible for a reasonable accommodation under the Accommodation in Employment (Medical-Related) Policy to assist you in returning to an open position in your facility.

If no positions for which you are qualified are open, you will be granted an extension of your personal leave for up to 30 days to find another position. If you have not obtained another position at the end of that 30 day extension, your employment will be terminated. You may reapply for employment at any time.

Appealing a Leave of Absence decision

If your request for a leave of absence has been denied, you may use the Open Door. You should first contact your leave specialist at Sedgwick to discuss your concerns. If you still have concerns after the discussion with your leave specialist, you may inform your HR representative that you wish to use the Open Door and he/she will advise you on next steps.

For more information

If you have questions or need further guidance, please contact your HR representative.

This information does not create an express or implied contract of employment or any other contractual commitment. Walmart may modify this information at its sole discretion without notice, at any time, consistent with applicable law. Employment with Walmart is on an at-will basis, which means that either Walmart or the associate is free to terminate the employment relationship at any time for any or no reason, consistent with applicable law.

Last Modified: March 1, 2018

Tab 5